(3)

No. 84-133

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ROBERT G. HOLLIDAY, on behalf of himself and all other persons similarly situated,

Petitioner,

—v.—

XEROX CORPORATION, a New York corporation, THE XEROX CORPORATION EMPLOYEES PROFIT SHARING RETIREMENT PLAN, and THE XEROX CORPORATION RETIREMENT INCOME GUARANTEE PLAN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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September 21, 1984

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QUESTION PRESENTED

When the trustee of a pension plan has transferred employer-contributed funds from one fully vested and nonforfeitable account to another account within the plan that is also fully vested and nonforfeitable, is it a violation of Section 403(c)(1) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1103(c)(1)(Supp. IV 1980), if the trustee thereafter utilizes those funds as a "setoff" in determining pension benefits at retirement in another plan that requires such a setoff?

LIST OF PARTIES

The parties to this proceeding are as listed in the caption. Pursuant to Supreme Court Rule 28.1, respondent Xerox Corporation ("Xerox") states that it has no parent or affiliates.

Xerox has seven United States subsidiaries which are not wholly owned—American Health Capital HIBI Management, Inc., a New York corporation, Dimensional Corporate Finance, Inc., a corporation of California, Financial Guaranty Associates, Inc., a corporation of Wisconsin, International Marine Underwriters of New England, Inc., a corporation of Massachusetts, LWB Syndicate Inc., a corporation of Illinois, Rank Xerox Business Equipment, Inc., a Delaware corporation, and The Genra Group, Inc., a Texas corporation.

Xerox also has other subsidiaries, as defined by the Securities and Exchange Commission, in a number of foreign countries: Burobail S.A., Copicentro S.A., Copicentros, S.A., Expro-Companhia de Comercio Exterior, Fuji Xerox Company Limited, Globe Park Management Limited, Indian Xerographic Systems Private, Ltd., Industrias Xerograficas, S.A. de C.V., Investissements Xerographiques Marocains S.A., Korea Xerox Company Ltd., Magua, S.A., Metalquimica de Bahia S.A. Industria Mecanica E. Quimica, Omnium de Participantions Mercure S.A., Philippine Fuji Xerox Corporation, Rank Xerox (Australia) Pty Limited, Rank Xerox Espanola S.A., Rank Xerox (Finance) Pty Limited, Rank Xerox Greece S.A., Rank Xerox Holding, B.V., Rank Xerox Investments Limited, Rank Xerox Limited, Rank Xerox New Zealand Ltd., Rank Xerox (Nigeria) Limited, Rank Xerox (Sales) Pty Limited, Roxfin (Proprietary) Limited, Societe Industrielle Rank Xerox S.A., Taiwan Fuji Xerox Corporation, Thai Xerographic Systems Co. Ltd., Versatec GmbH, Xerox Antilliana N.V., Xerox de Bolivia Limitada, Xerox do Brasil, S.A., Xerox de Colombia, S.A., Xerox Dominicana, C. por A., Xerox Egypt SAE, Xerox de El Salvador, S.A. de C.V., Xerox

d'Haiti, S.A., Xerox de Honduras, S.A., Xerox (Jamaica) Limited, Xerox Maroc, S.A., Xerox de Panama, S.A., Xerox del Paraguay SRL, Xerox del Peru, S.A., Xerox Servicios Tecnicos, C.A., Xerox Trinidad Limited, and Xerox de Venezuela, C.A.

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents respectfully request that this Court deny the petition for writ of certiorari seeking review of the Sixth Circuit Court of Appeals' decision in this case, which is reported at 732 F.2d 548.

STATEMENT OF THE CASE[1]

This is a class action brought by petitioner Robert G. Holliday ("Holliday") against respondents Xerox Corporation and two employee benefit plans it maintains, The Xerox Corporation Employees Profit Sharing Retirement Plan (the "Xerox Plan") and The Xerox Corporation Retirement Income Guarantee Plan ("RIGP"). Holliday had been employed by University Microfilms, Inc. ("UMI") before its acquisition by Xerox in 1962. His claim involves the disposition of funds contained in an employee benefit plan maintained by UMI (the "UMI Plan"), which was subsequently merged into the Xerox Plan in 1965. The courts below unanimously ruled that Xerox did not violate Section 403(c)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), Pub. L. No. 93-406, 88 Stat. 829, 876 (codified as amended at 29 U.S.C. § 1103(c)(1) (Supp. IV 1980)), when it transferred those funds from one account to another within the Xerox Plan, concluding that the transfer and subsequent use of those funds as a deduction or "setoff" in determining retirement income of Plan participants did not result in a prohibited "benefit" to Xerox.[2]

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1 For the purposes of this Brief, respondents agree to the "Reports of Opinions Below", "Statement of Jurisdiction" and "Statutory Provisions" sections of the Petition, and therefore have not reproduced them here. Sup. Ct. R. 34.2. All of the facts are undisputed and contained in the Complaint, the Plan documents or the Stipulation of Facts. Pursuant to Supreme Court Rule 19, respondents have requested certification of the printed appendix on appeal, which contains those documents.

2 This claim, contained in Count I of the Complaint, is asserted on behalf of plan participants originally employed by six acquired companies whose pension funds were merged into the Xerox Plan. The United States Court of Appeals for the Sixth Circuit affirmed the dismissal or, in the alternative, the entry of partial summary judgment as to Count I. Fed. R. Civ. P. 12, 56. Petitioner seeks a writ of certiorari to reverse that decision. Still before the district court (and therefore not at issue here) is plaintiff's claim that the transfer constituted a breach of contract as to the UMI Plan, in violation of state law.

The Xerox Plan is a pension plan covering practically all Xerox employees. An employee's holdings in the Plan are invested in two accounts, the "Retirement Account" and the "Optional Account". The funds in the Retirement Account are contributed by Xerox to the "General Fund", where they are invested in securities without a limited or fixed income. Xerox also contributes to the Optional Account. At the participant's option, he or she may take that money in cash or have it invested in the General Fund, the "Guaranteed Fund" (invested in securities with a guaranteed rate of return), or the "Xerox Stock Fund" (invested in Xerox common stock). Unlike the Retirement Account, in case of a "hardship" (financial need arising from sickness, disability or to finance the purchase of a home), a participant may withdraw money from the Optional Account with the approval of the Trustee.

Over the years, Xerox made a number of acquisitions of companies that had their own pension plans, six of which were merged into the Xerox Plan. The mergers were accomplished by placing the pension funds of the acquired company plans ("pre-Xerox funds" or "acquired company funds") into each participant's Optional Account in the Xerox Plan, since it was the only account which at that time assured immediate 100% vesting of the funds, as required by tax law. The funds were not placed in the employee's Retirement Account because its funds were not fully vested, and therefore were forfeitable if, like many of the employees in question, he had less than 15 years of service.

In 1975, Xerox reviewed the Xerox Plan and concluded that maintaining the pre-Xerox funds from the acquired companies in the Optional Account was inconsistent with the objective that they provide retirement security, since the characteristics of the Optional Account, including the ability to siphon off the funds for "hardship", could result in their being depleted before retirement. Accordingly, the pre-Xerox funds were transferred from each participant's Optional Account to his Retirement Account, because by that time the Xerox Plan had been amended to provide for complete vesting of the Retire-

ment Account after 5 years of service, eliminating the vesting problem that existed when the plans were originally merged. Moreover, the Retirement Account did not provide the withdrawal options available in the Optional Account, and thus it furthered the objective that these funds provide retirement security. *It is undisputed that whatever account the money was in, the participants were always fully vested, the funds were always nonforfeitable, and Xerox always had the absolute discretion to determine the form, time and manner of payment at retirement.*

The funds that were transferred were *not*, as petitioner contends, "private, employee funds". Statement of Question, Petition at i. The transfer involved pension funds meant for retirement, namely, the pre-Xerox funds contributed by the acquired companies. Contributions made by Xerox or employees to the Optional Accounts after the mergers were not transferred; that money remained in the Optional Accounts. Thus, in most cases the Optional Accounts were not depleted by the transfer but were only diminished, and the sum total of a participant's holdings in his Retirement Account and his Optional Account was not affected by the transfer.

On July 1, 1977, Xerox instituted the Retirement Income Guarantee Plan ("RIGP") to ensure a minimum retirement income level for all eligible Xerox employees.[3] Prior to RIGP, no Xerox Plan participant enjoyed this benefit because the Xerox Plan did not specify a fixed income level for each participant at retirement. His retirement income would be based on whatever funds were in his individual Retirement Account, which could vary greatly because of factors such as salary and length of service. Therefore Xerox adopted RIGP,

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3 While petitioner asserts that the transfers were made to facilitate the use of the funds as a RIGP offset for Xerox' benefit (Petition at 18), the fact is that, as he concedes (Petition at 11), the decision to transfer the funds took place in 1975, but the amendments to the Internal Revenue Code which facilitated RIGP were not enacted until 1976, and RIGP did not become effective until 1977.

under which each participant is guaranteed a minimum income level at retirement, irrespective of what may be in his individual account.

In operation, a participant's normal monthly retirement income (the "RIGP benefit") is computed based on his salary, years of service, and age at retirement. Then certain subtractions (called "offsets" or "setoffs") are made from that monthly income, including a percentage of the participant's social security benefits and the amount which would be payable monthly under a life annuity purchased with his Retirement Account. If a participant's Retirement Account purchases an annuity that exceeds the RIGP benefit, he receives that higher amount. But if his Retirement Account purchases an annuity which together with other designated setoffs is less than the RIGP benefit, RIGP makes up the difference.

Xerox voluntarily adopted RIGP; it was not obligated to. But having done so, it chose to apply RIGP in an evenhanded manner to all its employees. All past years of service are included in determining the RIGP benefit, including the pre-Xerox years of service of participants employed by companies later acquired by Xerox (in Holliday's case, his years at UMI), thus maximizing the years of service (and retirement income) of all employees. Therefore the benefit is applied in a nondiscriminatory way to all participating Xerox employees. But to ensure that the setoffs are also equal, the pre-Xerox contributions of the acquired companies, now placed in the Retirement Account, are also set off, the same as the contributions Xerox made for its employees during those years. Making an exception for the acquired company employees and leaving their pre-Xerox funds in the Optional Account, where they would not be set off, would be unfair and would have bestowed on them a windfall benefit not available to other Plan participants, all of whose retirement funds are included for setoff purposes.

Petitioner objects to the transfer to the extent that the funds were placed in an account where they will be set off in determing RIGP benefits, since it is undisputed that he is (and always has been) fully vested in those funds, and will receive them at retirement. He claims that the setoff of those funds in determining any RIGP benefit diverted the funds "to the benefit" of Xerox by reducing Xerox' liability under RIGP, and thus somehow violated ERISA. The legality of that setoff is, therefore, the only issue raised here.[4]

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4 Holliday specifically abandoned below any claim that he was damaged because the transfer resulted in a loss of investment flexibility, and he has never before alleged "disparate treatment". Accordingly, those claims (Petition 12-13, 16) "were neither raised before nor considered by the Court of Appeals" and should not be considered on this petition. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970).

SUMMARY OF REASONS WHY THE WRIT SHOULD BE DENIED

I. The decision below does not satisfy the requirements for review on writ of certiorari because

A. it is merely an application of the principle already settled by the Supreme Court in *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981) ("Alessi");

B. it is not in conflict with any decision of this Court;

C. it does not create a conflict within the courts of appeals;

D. it is limited to its peculiar facts; and

E. it does not raise an important issue.

II. The decision below is correct. Congress enacted ERISA to preserve pension plan assets and to guarantee income to *all* participants *at retirement*, not specific benefits for individual claimants. A fiduciary is given broad discretion to accomplish this purpose, and his decisions will not be disturbed unless they are arbitrary and capricious. This Court approved setoffs in *Alessi*; while they may diminish a particular individual's pension benefit, they are consistent with the congressional purpose of preserving the fund as a whole for all participants.

III. Petitioner's theory has no basis in logic. *Every* determination adverse to a participant lessens the total disbursements of the plan, and decreases the necessity for employer contributions; according to petitioner's theory, that results in a "benefit" to the employer. But the logical conclusion of that theory is that a fiduciary would *never* be able to decide against a plan participant, for to do so would always violate ERISA.

REASONS WHY THE WRIT SHOULD BE DENIED

I. THE PETITION FAILS TO SATISFY THE CRITERIA FOR REVIEW ON A WRIT OF CERTIORARI.

The only issue presented is whether the setoff in question violated ERISA since, even under petitioner's theory, there is no claim that the transfer without the setoff "inured to the benefit" of Xerox. That issue is not appropriate for consideration on writ of certiorari for the following reasons:

A. The validity of setoffs under ERISA has already been settled by this Court in the *Alessi* case. *See infra* at 12-13. The Sixth Circuit merely applied that settled principle to the particular facts presented here.

B. The decision below is not in conflict with *any* decision of this Court. Petitioner has not identified such a case, and respondents are not aware of any.

C. There is no conflict among the circuits on this issue. Those circuits which have considered setoffs have unanimously approved them. *See, e.g., Kapuscinski v. Plan Administrator*, 658 F.2d 427 (6th Cir. 1981); *Quinn v. Burlington Northern Inc. Pension Plan*, 664 F.2d 675 (8th Cir. 1981), *cert. denied*, 456 U.S. 928 (1982); *Employee Benefits Committee of the Retirement System of Hawaiian Telephone Co. v. Pascoe*, 679 F.2d 1319 (9th Cir. 1982); *Server v. Interpace Corp.*, 657 F.2d 1115 (9th Cir. 1981); and *Myron v. Trust Co. Bank Long Term Disability Benefit Plan*, 522 F. Supp. 511 (N.D. Ga. 1981), *aff'd mem.*, 691 F.2d 510 (11th Cir. 1982), *cert. denied*, 103 S. Ct. 3086 (1983). There is no case, in any circuit, inconsistent with this one.

D. The transfers and setoff at issue are so peculiar and extraordinary that it is highly unlikely that a decision based on them will ever have precedential value. The unusual nature of the facts here makes it unlikely that they will be duplicated. The Court should decline to consider a case on certiorari

where, as here, it turns on the application of a settled principle of law to unique pension plans.

E. Whether Xerox could transfer and then set off these funds is not an important issue that requires review by the Court to guarantee the effective administration of justice in the United States. Whatever its importance to the parties, this claim simply does not raise a substantial federal question which merits the attention of this Court.

II. THE DECISION BELOW IS CORRECT.

A. The Legislative Purpose of ERISA Is to Preserve Pension Plan Assets to Guarantee Income to *All* Participants *at Retirement*, not Specific Benefits for Individual Participants.

Petitioner's assertion that ERISA somehow guarantees his individual claim and that an employer or other fiduciary cannot make a determination adverse to an individual claimant if it results in some remote "benefit" to the employer has no basis in the legislative history of ERISA, and "[t]he ultimate question is one of congressional intent . . . ." *Touche Ross & Co. v. Redington*, 442 U.S. 560, 578 (1979).

ERISA is the result of an exhaustive consideration by Congress of the problems that had arisen for millions of Americans who had discovered upon reaching retirement age that they would not receive a pension, either because they were not vested in a pension plan, or because the assets of the plan had been dissipated; "despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans . . . ." 29 U.S.C. § 1001(a)(1976). Congress wanted to make sure that those who do participate in such plans actually receive benefits and do not lose them as a result of unduly restrictive forfeiture provisions or failure of the pension plan to accumulate and retain sufficient funds to meet its obligations. H.R. Rep. No. 807, 93d Cong., 2d Sess. 8, *reprinted in* 1974 U.S. Code Cong. & Ad. News 4670,

4676-77. Congress ensured the integrity of accrued benefits through vesting requirements and by proscribing forfeitures. As the court below noted, to guarantee that an employee receives his pension *at retirement*, ERISA establishes minimum rules for employee participation, funding standards to increase the solvency of the plans, and an insurance program to be sure assets are available in case the plan terminates with insufficient funds. *See* Petition at A-3-4; 732 F.2d 548 at 550.[5]

Congress realized that it was dealing with plans which are voluntarily created by employers, so it gave them maximum freedom, as overly stringent regulation would deter the employers from instituting any plans at all. *See* 120 Cong. Rec. 4308 (1974).

> The purpose of this pension legislation is not to establish an ideal pension plan, but rather, to set up certain minimum standards to assure that all workers receive the pension benefits that they have earned. Congress will be careful to avoid making these standards so tough that they will actually discourage the creation of new pension plans and thereby deny additional workers the opportunity to participate in private retirement plans.

119 Cong. Rec. 30,041 (1973) (remarks of Sen. Bentsen). Thus "Congress left employers with wide discretion regarding what benefits would be provided by their plans." *Petrella v. NL Industries, Inc.*, 529 F. Supp. at 1365. Contrary to petitioner's assertion (Petition at 17), Xerox was free to exercise that broad discretion when it amended the Xerox Plan in 1975 and when it created RIGP in 1977, for "despite the extensive statutory scheme governing pension plans, Congress left many matters to the discretion of the parties." *Van Orman v. American Insurance Co.*, 680 F.2d 301, 312 (3d Cir. 1982).

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[5] Congress did not require that interim or ancillary benefits be guaranteed. H.R. Rep. No. 807, 93d Cong., 2d Sess. 60, *reprinted in* 1974 U.S. Code Cong. & Ad. News 4670, 4726; *Petrella v. NL Industries, Inc.*, 529 F. Supp. 1357, 1366 (D.N.J. 1982). Therefore, even if the issue of an alleged loss of investment flexibility was before the Court, *see supra* note 4, that flexibility is not guaranteed by ERISA.

B. The Fiduciary's Duty Is to Preserve the Assets of the Plan to Insure Adequate Funding.

> Congressional purpose and [the corresponding duty of fiduciaries is] to protect the total plan funds for retirement, death or disability compensation.

Fine v. Semet, 514 F. Supp. 34, 43 (S.D. Fla. 1981), *aff'd*, 699 F.2d 1091 (11th Cir. 1983).

ERISA makes clear that the fiduciary's duty is to act as a prudent trustee to preserve the total assets of the fund, not petitioner's individual share. It provides that "the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan." 29 U.S.C. § 1103(c)(1) (Supp. IV 1980). To accomplish this, the fiduciary must discharge his duties "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use . . . ." 29 U.S.C. § 1104(a)(1)(B)(1976). Congress was very specific as to the type of behavior of a fiduciary it was proscribing, 29 U.S.C. § 1106 (1976), and a trustee violates the standard of care only if he acts "in bad faith, or upon lack of a factual foundation, or when unsupported by substantial evidence." *Tomlin v. Board of Trustees of the Construction Laborers Pension Trust*, 586 F.2d 148, 150 (9th Cir. 1978). The ERISA standard is the same as that found in the Labor-Management Relations Act, *Gordon v. ILWU-PMA Benefit Funds*, 616 F.2d 433, 438 (9th Cir. 1980), and requires the fiduciary to act for the benefit of *all* participants, not just some.

> The trustees of a pension plan have a fiduciary duty to preserve the financial security of a pension fund and to apply the assets of the fund for the benefit of the employees to the greatest extent possible. We recognize that these respective obligations are often conflicting. Any action taken by the trustees is bound to be categorized as

arbitrary by those adversely affected by it. Partly because of these conflicting obligations, trustees are given broad discretion to act.

Adams v. Trustees of the New Jersey Brewery Employees' Pension Trust Fund, 670 F.2d 387, 397-98 (3d Cir. 1982) (footnotes omitted).

Xerox therefore has broad discretion, and the decision to apply the setoff in question "must prevail unless it was arbitrary and capricious, in light of the legislative purposes behind ERISA and the legitimate purposes of the Plan," *Oates v. Teamster Affiliates Pension Plan*, 482 F. Supp. 481, 484 (D.D.C. 1979) (footnotes omitted), which were to preserve the assets of the entire plan—and not to enhance the claim of one individual over the other participants. *Palino v. Casey*, 664 F.2d 854, 858 (1st Cir. 1981).

C. ERISA Permits Setoffs.

Setoffs such as those provided for in RIGP are routine, and clearly contemplated by ERISA. This Court considered the legislative history of ERISA in approving setoffs in *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), and found that the vesting and nonforfeitability provisions of ERISA do not bar setoffs. As the Sixth Circuit said in *Kapuscinski v. Plan Administrator*, 658 F.2d 427, 429 (6th Cir. 1981), (affirming another case where pension plan trustees set off other sources of income in determining benefits):

> In *Alessi*, the Court noted that the nonforfeitability provision of ERISA, Section 1053(a), "assures that an employee's claim to the protected benefit is legally enforceable, but it does not guarantee a particular amount or a method of calculating the benefit." *Id.* at 512, 101 S.Ct. at 1900. The Court then discussed "integration," which it described as "a calculation practice under which benefit levels are determined by combining pension funds with other income streams available to the retired employees." *Id.* Elucidating, the Court stated:

Through integration, each income stream contributes for calculation purposes to the total benefit pool to be distributed to all the retired employees, even if the nonpension funds are available only to a subgroup of the employees. The pension funds are thus integrated with the funds from other income maintenance programs, such as Social Security, and the pension benefit level is determined on the basis of the entire pool of funds. Under this practice, an individual employee's eligibility for Social Security would advantage all participants in his private pension plan, for the addition of his anticipated Social Security payments to the total benefit pool would permit a higher average pension payout for each participant. The employees as a group profit from that higher pension level, although an individual employee may reach that level by a combination of payments from the pension fund and payments from the other income maintenance source. In addition, integration allows the employer to attain the selected pension level by drawing on the other resources, which, like Social Security, also depend on employer contributions.

The circuit courts have uniformly endorsed setoffs. In addition to *Kapuscinski, see Employee Benefits Committee of the Retirement System of Hawaiian Telephone Co. v. Pascoe*, 679 F.2d 1319, 1321 (9th Cir. 1982), ("the *amount* of benefits provided under a pension plan is specifically left to the determination of the parties . . . ." (emphasis in original)); *Server v. Interpace Corp.*, 657 F.2d 1115 (9th Cir. 1981); *Quinn v. Burlington Northern Inc. Pension Plan*, 664 F.2d 675 (8th Cir. 1981), *cert. denied*, 456 U.S. 928 (1982); and *Myron v. Trust Co. Bank Long Term Disability Benefit Plan*, 522 F. Supp. 511 (N.D. Ga. 1981), *aff'd mem.*, 691 F.2d 510 (11th Cir. 1982), *cert. denied*, 103 S. Ct. 3086 (1983).

III. PLAINTIFF'S THEORY VIOLATES THE PUBLIC POLICY OF ERISA.

A claim that there cannot be an offset of retirement funds by an employer-trustee, Petition at 18-19, was rejected in *Flinchbaugh v. Chicago Pneumatic Tool Co.*, 531 F. Supp. 110 (W.D. Pa. 1982), because ERISA specifically contemplates management as trustees, and their actions in using setoffs to preserve the funds in a plan are reasonable and not a conflict of interest. *See also Fine v. Semet*, 514 F. Supp. 34, 43 (S.D. Fla. 1981), *aff'd*, 699 F.2d 1091 (11th Cir. 1983), which rejected a claim such as Holliday's because its acceptance would logically prohibit all major participants from serving as trustees, since any action to increase the profitability of plan assets could be construed as self-dealing.

That just makes sense, for there is a basic logical flaw in petitioner's case—one that would destroy the employer-contributed pension plans that ERISA seeks to preserve if it became the law. *Every* setoff (indeed, every determination a trustee makes which denies a benefit to a participant) has the effect of preserving the fund's assets, and diminishes, to some extent, the amount the employer contributes. But if Holliday's theory were carried to its logical conclusion, a trustee could *never* make a determination adverse to a participant; if he did, that determination would "benefit" the employer and therefore every time he did, he would violate ERISA.

That's absurd.

CONCLUSION

This case involves the application of a settled principle of law to unique facts, important only to the parties, and does not raise an issue of significance for the national administration of justice. Further, the decision below is correct. Accordingly, the petition should be denied and respondents awarded costs and such other and further relief as is proper.

Respectfully submitted,

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September 21, 1984